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ORDINANCE NO. 831

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON, AMENDING SHORELINE MUNICIPAL CODE CHAPTER 5.05 BUSINESS LICENSES TO IMPLEMENT THE CITY'S BUSINESS & OCCUPATION TAX AND ADOPT MANDATORY PROVISIONS PURSUANT TO CHAPTER 35.90 RCW.

WHEREAS, on December 4, 2017, the City of Shoreline adopted Ordinance No. 808, establishing a Business & Occupation Tax (B&O Tax) effective on January 1, 2019; and

WHEREAS, since the adoption of Ordinance No. 808, the City has taken several steps to facilitate the implementation of the B&O Tax, including the selection of *FileLocal,* an online service for registering a business, filing, and paying taxes; and

WHEREAS, the City performed an evaluation of the business process necessary to implement *FileLocal's* standard configuration of its online services and determined that amendments to Shoreline Municipal Code (SMC) Chapter 5.05 Business Licenses were needed, specifically related to license renewal penalties and tax delinquency; and

WHEREAS, in 2017, the Washington State Legislature passed Engrossed House Bill 2005, now codified at Chapter 35.90 RCW, to improve the business climate in Washington State by simplifying the administration of municipal general business licenses; and

WHEREAS, with this action, the Washington State Legislature tasked cities, working through the Association of Washington Cities (AWC), to develop a model ordinance with mandatory provisions that a city must adopt by January 1, 2019; and

WHEREAS, the model ordinance was finalized in June 2018 and contains mandatory provisions related to the definition of "engaging in business within a city" and sets a uniform minimum licensing threshold of $2,000 under which a business is exempt from a city's general business license requirements; and

WHEREAS, amendments are required to SMC Chapter 5.05 Business Licenses to fulfill the City's obligations under Chapter 35.90 RCW to adopt the mandatory provisions of the model ordinance; and

WHEREAS, these amendments must be effective by January 1, 2019, to successfully implement the B&O Tax and to satisfy the statutory mandate;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. Amendment – SMC Chapter 5.05 Business Licenses. Chapter 5.05 Business Licenses of the Shoreline Municipal Code is adopted as set forth in Exhibit A to this Ordinance.

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Section 2. Corrections by City Clerk or Code Reviser. Upon approval of the City Attorney, the City Clerk and/or the Code Reviser are authorized to make necessary corrections to this ordinance, including the corrections of scrivener or clerical errors; references to other local, state, or federal laws, codes, rules, or regulations; or ordinance numbering and section/subsection numbering and references.

Section 3. Severability. Should any section, subsection, paragraph, sentence, clause, or phrase of this ordinance or its application to any person or situation be declared unconstitutional or invalid for any reason, such decision shall not affect the validity of the remaining portions of this ordinance or its application to any person or situation.

Section 4. Publication and Effective Date. A summary of this Ordinance consisting of the title shall be published in the official newspaper. This Ordinance shall take effect at 12:01 am Pacific Time on January 1, 2019.

PASSED BY THE CITY COUNCIL ON SEPTEMBER 10, 2018.

Mayor Will Hall

ATTEST:

Jessica Simulcik Smith
City Clerk

APPROVED AS TO FORM:

Margaret King
City Attorney

Date of Publication: September 13, 2018
Effective Date: January 1, 2019

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Amendments to SMC Chapter 5.05

1. AMENDMENTS TO THE FOLLOWING EXISTING CODE SECTIONS:

SMC 5.05.020 Definitions – General, is amended as follows:

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meanings given in this section:

~~A. "Business," "occupation" or "pursuit" means and includes all home occupations, wholesalers, retailers, service providers, towing operators, peddlers, canvassers, solicitors, for-hire vehicles, limousine services, pawnbrokers, secondhand dealers and junk dealers engaged in with the object of economic gain, benefit or advantage to the person, firm or corporation, or to another person or class, directly or indirectly, whether part-time or full-time, whether resident or nonresident.~~

~~B.~~ A. "City" means the city of Shoreline, Washington.

~~C.~~ B. "Clerk" means such city employees or agents as the city manager shall designate to administer this chapter, or any designee thereof.

~~D. "Engage in business" means commence, conduct, or continue in business, and also the exercise of corporate or franchise powers as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.~~

C. "Engaging in business" or "Engage in business" means commencing, conducting, or continuing in business, and also the exercise of corporate or franchise powers, as well as liquidating a business when the liquidators thereof hold themselves out to the public as conducting such business.

~~E.~~ D. "Person," "firm," or "corporation," used interchangeably in this chapter, means any individual, receiver, administrator, executor, assignee, trustee in bankruptcy, trust, estate, ~~firm,~~ co-partnership, joint venture, club, company, joint stock company, business trust, municipal corporation, political subdivision of the state of Washington, corporation, limited liability company, association, ~~canvasser, peddler, solicitor,~~ society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, nonprofit or otherwise, and includes the United States or any instrumentality thereof.

SMC 5.05.030 Business license required – Posting, is amended as follows:

Unless otherwise exempted by this chapter, it ~~It~~ is unlawful for any person or business~~, firm or corporation~~ ~~which is required to register with the State Department of Revenue~~ to engage in any business~~, occupation or pursuit~~ in the city without first having obtained a business license therefor as provided in this chapter. The business license provided for in this chapter shall be posted in a conspicuous location at the place of the business. Such business license is nontransferable.

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SMC 5.05.040 Exception – Applicability of provisions, is amended as follows:

This chapter shall not be applicable to:

A. The performance of governmental or proprietary functions by any instrumentality of the United States, the state of Washington, or any political subdivision thereof.

B. ~~Businesses or activities~~ Any person or business for which a regulatory business license or franchise is required by any other chapter or section of the Shoreline Municipal Code as now or hereafter enacted or amended.

~~C. The delivery of goods by vehicle to a customer or client by a business where the sale occurred on a business premises outside of the city and the only event occurring within the city is a delivery.~~

~~D.~~ C. ~~Individuals and/or businesses~~ Any person or business who conducts limited retail sales as part of a city-sponsored event or a recognized 501(c)(3) nonprofit organization-sponsored event no more than six days per year and who generates no more than $5,000 in gross receipts per calendar year within the city.

~~E.~~ D. ~~Individuals and/or businesses~~ Any person or business who provides recreation instructional services or performance services as part of a city-sponsored event or a recognized 501(c)(3) nonprofit organization-sponsored event and who generates no more than $5,000 in gross receipts per calendar year within the city.

E. Any person or business whose annual value of products, gross proceeds of sales, or gross income of the business in the city is equal to or less than $2,000, whether or not they maintain a place of business within the city, shall be exempt from the general business license requirements in this chapter. The exemption does not apply to regulatory license requirements or activities that require a specialized permit.

SMC 5.05.050 Application and renewal, is amended as follows:

A. Application for a business license shall be made by filing a master application through ~~State Department of Licensing's Master License Service, in coordination with~~ the ~~city~~ clerk, giving such information as is deemed reasonably necessary to enable the enforcement of this chapter. Persons applying for a license must pay a fee as established by the city council by ordinance, and the ~~Master License Service's~~ handling fee.

B. A business license must be approved by the city before a business commences operation within the city. If business is transacted by one person at two or more separate locations within the city, a separate application must be filed for each business location and a separate license shall be obtained and displayed in each location.

C. The clerk may refer applications to the planning and development services department, the police department, or other governmental agencies for their review. Compliance with

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building, zoning and other laws is the business owner's responsibility and issuance of a business license is not a guarantee of compliance or a waiver of future enforcement by the city or other agency with jurisdiction.

D. If more than one business is conducted or operated on premises, a separate license shall be required for each business. Each business owner must make a separate application for license.

E. The filing of an application for a license, or the renewal thereof, or the payment of any application or renewal fee, shall not authorize a person to engage in or conduct a business until such license has been granted or renewed.

F. A business license is nontransferable. No licensee shall allow another person to operate a business under, or display the license issued to their business, nor shall another person operate under or display the license issued to another business. A person who acquires an existing business must make application for a city business license before commencing business within the city with that business. A licensee must report a change of location of the business to the ~~Master License Service, in coordination with~~ the ~~city~~ clerk. A change of the location of a business requires approval by the city before business may commence at the new location, and may require submitting a new ~~master~~ business license application and payment of fees.

G. License renewals are handled by the ~~Master License Service in coordination with the~~ city. Renewal of the city license requires payment of fees, including handling fees.

SMC 5.05.060 License term or expiration, is amended as follows:

Each city license issued shall expire on December 31 of each year ~~the date determined by the Master License Service, in coordination with the city~~. The city license fee may be prorated to coordinate with the expiration date assigned by the city in accordance to SMC 3.01 ~~Master License Service~~.

SMC 5.05.080 Penalty for late renewal, is amended as follows:

Licenses must be renewed annually on or before the expiration date, or expiration of any prorated period. Failure to renew a business license by the license expiration date may result in the assessment of a late renewal penalty in accordance to SMC 3.01~~of 50 percent of the renewal fee~~. Nonrenewal may require reapplication for the city license, and approval by the city.

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2. ESTABLISHMENT OF A NEW CODE SECTION, SMC 5.05.025, TO READ AS FOLLOWS:

SMC 5.05.025 -Activities constituting Engaging in Business in the City

A. This section sets forth examples of activities that constitute engaging in business in the city, and establishes safe harbors for certain of those activities so that a person who meets the criteria may engage in de minimus business activities in the city without having to pay a business license fee. The activities listed in this section are illustrative only and are not intended to narrow the definition of "engaging in business" provided in this chapter. If an activity is not listed, whether it constitutes engaging in business in the city shall be determined by considering all the facts and circumstances and applicable law.

B. Without being all inclusive, any one of the following activities conducted within the city by a person, or its employee, agent, representative, independent contractor, broker or another acting on its behalf constitutes engaging in business and requires a person to register and obtain a business license.

1. Owning, renting, leasing, maintaining, or having the right to use, or using, tangible personal property, intangible personal property, or real property permanently or temporarily located in the city.
2. Owning, renting, leasing, using, or maintaining, an office, place of business, or other establishment in the city.
3. Soliciting sales.
4. Making repairs or providing maintenance or service to real or tangible personal property, including warranty work and property maintenance.
5. Providing technical assistance or service, including quality control, product inspections, warranty work, or similar services on or in connection with tangible personal property sold by the person or on its behalf.
6. Installing, constructing, or supervising installation or construction of, real or tangible personal property.
7. Soliciting, negotiating, or approving franchise, license, or other similar agreements.
8. Collecting current or delinquent accounts.
9. Picking up and transporting tangible personal property, solid waste, construction debris, or excavated materials.
10. Providing disinfecting and pest control services, employment and labor pool services, home nursing care, janitorial services, appraising, landscape architectural services, security system services, surveying, and real estate services including the listing of homes and managing real property.
11. Rendering professional services such as those provided by accountants, architects, attorneys, auctioneers, consultants, engineers, professional athletes, barbers, baseball clubs and other sports organizations, chemists, consultants, psychologists, court reporters, dentists, doctors, detectives, laboratory operators, teachers, veterinarians.
12. Meeting with customers or potential customers, even when no sales or orders are solicited at the meetings.
13. Training or recruiting agents, representatives, independent contractors, brokers or

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others, domiciled or operating on a job in the city, acting on its behalf, or for customers or potential customers.

14. Investigating, resolving, or otherwise assisting in resolving customer complaints.

15. In-store stocking or manipulating products or goods, sold to and owned by a customer, regardless of where sale and delivery of the goods took place.

16. Delivering goods in vehicles owned, rented, leased, used, or maintained by the person or another acting on its behalf.

C. If a person, or its employee, agent, representative, independent contractor, broker or another acting on the person's behalf, engages in no other activities in or with the city but the following, it need not register and obtain a business license.

1. Meeting with suppliers of goods and services as a customer.

2. Meeting with government representatives in their official capacity, other than those performing contracting or purchasing functions.

3. Attending meetings, such as board meetings, retreats, seminars, and conferences, or other meetings wherein the person does not provide training in connection with tangible personal property sold by the person or on its behalf. This provision does not apply to any board of director member or attendee engaging in business such as a member of a board of directors who attends a board meeting.

4. Renting tangible or intangible property as a customer when the property is not used in the city.

5. Attending, but not participating in a "trade show" or "multiple vendor events". Persons participating at a trade show shall review the city's trade show or multiple vendor event ordinances.

6. Conducting advertising through the mail.

7. Soliciting sales by phone from a location outside the city.

D. A seller located outside the city merely delivering goods into the city by means of common carrier is not required to register and obtain a business license, provided that it engages in no other business activities in the city. Such activities do not include those in subsection (C).

E. The city expressly intends that engaging in business include any activity sufficient to establish nexus for purposes of applying the license fee under the law and the constitutions of the United States and the State of Washington. Nexus is presumed to continue as long as the taxpayer benefits from the activity that constituted the original nexus generating contact or subsequent contacts.